IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2910 OF 1991

1. Mehta Parikh & Co. Pvt.Ltd.
   a Company incorporated under
   the Companies Act 1956 and
   having its registered office
   at Kapasia Bazar, Ahmedabad
   and having its Bombay Office
   at 45/47, Bombay Samachar Marg,
   Bombay 400 023.

2. Anjali Ashok Parikh
   of Bombay Indian Inhabitant
   residing at Rajkamal, 10th
   Road, 20, Ashok Nagar Soc.
   J.V.P.D. Scheme,Bombay-49 ....Petitioners

V/s.

1. The Bank of Maharashtra
   having its Head office at 1177,
   Budhawar Peth, Pune and
   Bombay City Divisional Office
   at Janmangal, 45/47, Bombay
   Samachar Marg, Bombay-23.

2. Union of India

3. P.A. Chitle
   the Estate Officer, Bank of
   Maharashtra having his office
   at Janmangal, 6th floor,
   45/47, Bombay Samachar Marg,
   Bombay - 400 023. ....Respondents

Mr.Pooniwala i/b M/s.M.Ranchoddas & Co. for the Petitioners.

Mr.Girish Kulkarni i/b Ramchandra Yadav for Respondent No.1.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.

DATED : 28TH JANUARY, 2005.

ORAL JUDGMENT (PER S.J. VAZIFDAR, J.) :

1. Petitioner No.2 is a Director and shareholder of Petitioner No.1. Respondent Nos.2 and 3 are the Union of India and one P.A. Chitle, the Estate Officer of Respondent No.1.

2. The Petitioners have inter-alia sought a writ of certiorari to quash and set-aside the action of the third Respondent in proceeding with the eviction proceedings against Petitioner No.1 at the instance of Respondent No.1 and a writ of Mandamus restraining Respondent No.3 from proceeding in any manner with the eviction proceedings without first offering inspection and furnishing the documents referred to in Exhibits "D" and "E" to the Petition.

3. The Petitioner was filed on 17th September, 1991. By an order dated 24th September, 1991, the Petition was admitted and an ad-interim order was passed restraining Respondent No.3 from proceeding with the eviction proceedings. The ad-interim order was confirmed by an order dated 3rd October, 1991. Mr.Pooniwala, the learned counsel appearing on behalf of the Petitioners invited our attention to guidelines

dated 14th January, 1992 issued by the Minister of Urban Development, Government of India, a clarification dated 15th August, 1992 issued by the Minister of Urban Development, Government of India in regard thereto and guidelines dated 30th May, 2002 issued by the Ministry of Urban Development and Poverty Alleviation (Directorate Estates). The Petitioners amended the Petition to bring the guidelines on record and to rely upon them in support of their case the Petitioners.

4. Petitioner No.1 is admittedly a tenant in respect of premises presently owned by Respondent No.1. By a letter dated 17th January, 1991 addressed to Petitioner No.1, Respondent No.3 stated that being of the opinion that Petitioner No.1 was in unauthorised occupation of the said premises they should be evicted therefrom. The ground for considering Petitioner No.1 to be in unauthorised occupation was that it continued to occupy the said premises even after the termination of its tenancy by Respondent No.1 by a letter dated 5th June, 1974. It was further alleged that the said premises were required by Respondent No.1 for use and occupation due to its expanding banking activities the present premises being allegedly insufficient and inadequate

for the same. Petitioner No.1 was therefore called upon to show cause why the order of eviction should not be made. The said letter dated 5th June, 1974 stated that Petitioner No.1 was a monthly tenant in respect of the said premises but called upon Petitioner No.1 to hand over possession of the same to Respondent No.1, as Respondent No.1 require the same for the said reasons.

5. Thereafter correspondence ensued between the Petitioners and the Respondents and the proceedings commenced before Respondent No.3 under the said Act.

6. The Petitioners being aggrieved by the impugned notice and the manner in which the proceedings were being conducted filed the present Petition. The Petitioners have also alleged bias against Respondent No.3. It is not necessary for us to consider any of the Petitioners' contention on merits in view of the order we have decided to pass.

7. Mr.Pooniwala submitted that Petitioner No.1 is admittedly the tenant in respect of the said premises. The only ground on which the Petitioners are sought to be evicted under the provisions of the said Act is that Respondent No.1 requires the premises

itself in view of its expanding banking activities. Mr.Pooniwala submitted that in view of the said guidelines and the judgment of a Division Bench of this Court,the same is not permissible.

. He relied, in the first instance, upon the guidelines issued on 14th January, 1992 which inter-alia stipulated that the provisions of the Act should be used primarily to evict totally unauthorised occupants of the premises of public authorities or sub-letees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises. The guidelines provide that proceedings should be initiated only in cases where the occupation becomes unauthorised on genuine grounds on law and that the provisions of the Act should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, whether the premises were in occupation of the original tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired.

. The guidelines were forwarded to various public authorises under cover of a letter dated 28th January, 1992 addressed by the Deputy Secretary to

Government of India requiring strict enforcement of the instructions contained therein.

8. By a letter dated 15th August, 1992, the proceedings at an interdepartmental meeting convened on 19th June, 1992 by the Government of India were recorded. One of the clarifications sought by the banks/PSU's was that they should be free to evict even authorised tenants if the premises were required for their own bona-fide use including use by their employees or redevelopment of the premises or business use. It was however clarified as under :-

> "Resorting to PP Act to vacant authorized tenants merely to secure possession of the premises to accommodate the PSU's employees, or for the commercial redevelopment or to open a branch can not be agreed as it will be totally against the spirit of the guidelines for protecting interests of genuine authorized tenants. The Modal Rent Control Legislation permit revision of present rents to the level of market rents over a period of and annual indexation of rents. After the State Governments enact the amendments, on the lines of the Modal Rent Control Legislation, the PSU's can secure rent revision according to the new formula. as such, there is no justification for seeking eviction of original tenants merely to secure higher rents".

9. The guidelines issued on 30th May, 2002 contained the provisions identical to those in 14th

January,1992 which we have referred to above. In view thereof, Mr.Pooniwala submitted that the clarification issued in respect of 14th January, 1992 guidelines would clearly apply to the 30th May, 2002 guidelines. This submission no doubt is well founded for had it been otherwise the Government of India would have so stated.

10. Mr.Pooniwala then relied upon a judgment of a Division Bench of this Court in case of *Persis Kothawalla v. Life Insurance Corporation of India & another, 2004 (4) Bom.C.R. 610*. The Division Bench held in paragraph 66 of the judgment that the 2002 guidelines have statutory force. The division bench held that assuming for the sake of argument that the guidelines do not have statutory force, the same are even otherwise binding on the LIC, as the same reflects the policy of the Union of India and any failure to abide by the guidelines would be violative of Article 14 of the Constitution of India. On a parity of reasoning it is submitted that the guidelines would also apply to banks such as Respondent No.1. In case of banks such as Respondent No.1, this is clear from the fact that the clarification referred to above was in fact sought by the banks.

11. Mr.Pooniwala submitted that in view of the above guidelines and the aforesaid judgment, the said notice of eviction and the proceedings ought to be quashed. We do not for a moment suggest that his submission is without force. We however, do not think it proper to do so ourselves. It is necessary that the proceedings which have been initiated ought to proceed to their logical conclusion. We consider it appropriate that the Petitioners present their entire case before Respondent No.3 who would necessarily have to deal with all aspects of the matter. While we appreciate the force of Mr.Pooniwala's submissions, we consider it appropriate that in the first instance Respondent No.3 ought, in accordance with Act, to consider the entire matter including the question whether the guidelines the clarification thereto apply to the Petitioners' case. The Petitioners cannot be prejudiced thereby.

12. The above contention was also raised before a Division Bench of this Court to which one of us (A.P.Shah, J.) was a party in the case of *Crawford Bayley & Co. and Ors. v. Union of India & Ors. 2003 (6) Bom.C.R. 112*. The Division Bench however held that the challenge to the show cause notice

cannot be entertained at this stage. The Division Bench held as under :-

> "16. Now so far as the third submission is concerned, according to the petitioners, the show cause notice and the grounds mentioned therein on the basis of which an order of eviction is proposed to be made against the petitioners, are contrary to the guidelines issued by the Central Government. According to the petitioners, the guidelines issued by the Central Government from time to time regulate the exercise of power by Estate Officer under section 3 of the Public Premises Act. In our opinion, however, this challenge to the show cause notice cannot entertained at this stage. The submission that the grounds mentioned in the show cause notice are contrary to the guidelines can be raised by the petitioners in reply to the show cause that has been issued and in case such a submission is made, obviously the Estate Officer will have to consider it on its own merit. The said Act provides further remedy of an appeal to the Principal Judge of the City Civil Court, the submission can also be raised in appeal before the Principal Judge of the City Civil Court. Presently only a show cause notice has been issued to the petitioners. The remedy of raising this submission in reply to the show cause notice and in appeal before the Principal Judge of the City Civil Court, in our opinion, is adequate and therefore, a challenge to the validity of the show cause notice on this ground cannot be entertained at this stage. It may be mentioned here that on behalf of the respondent No.3 - bank it was contended that these guidelines are not binding on the Estate Officer.

> In our opinion, this contention can be raised by the respondent no.3 before the Estate Officer and therefore, we do not propose to deal with this contention. Taking overall view of the matter therefore, the petition as framed and filed cannot be entertained and it is rejected."

13. In view thereof, we do not propose disposing of the Petition on merits. However, certain clarifications and safeguards are necessary which we propose granting by our order.

14. In the circumstances :-

i). Respondent No.3 is at liberty to proceed with the eviction proceedings against Petitioner No.1 in accordance with law.

ii). All rights and contentions of the Petitioners including those contained in the Petition both before and after the amendment are kept open. The Petitioners are at liberty to agitate the same before Respondent No.3.

iii). The Respondents shall furnish inspection of all the documents referred to in Exhibits "D" and "E" to the Petition and such other

documents they may be entitled to inspection of in law.

iv). In the event of any oral evidence being led, the parties shall be granted an opportunity to cross-examine the witnesses.

v). Respondent No.3 shall give reasons for each of his findings and in respect of each of the Petitioners' contentions.

vi). In the event of the order passed by Respondent No.3 being adverse to the Petitioners, the same shall not be implemented for a period of twelve weeks after a copy thereof is furnished to the Petitioners.

15. The Writ Petition is accordingly disposed of. There shall be no order as to costs.

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DATE OF DECISION : 28TH JANUARY, 2005.

For Approval and Signature :

HON'BLE MR.JUSTICE A.P. SHAH

HON'BLE MR.JUSTICE **S.J. VAZIFDAR**

1. Whether Reporters of Local Papers may be allowed to see the judgement ?)

2. To be referred to be Reporter or not ?)